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7

8 IN THE UNITED STATES DISTRICT COURT  
9  
EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 GARY STEPHEN MAYNARD,

14 Defendant.  
15

CASE NO. 2:21-CR-00224 TLN

GOVT.'S OPPOSITION TO DEFENDANT'S  
MOTION TO REOPEN DETENTION

DATE: December 20, 2021

TIME: 2:00 p.m.

COURT: Hon. Jeremy D. Peterson

16  
17 I. INTRODUCTION

18 Gary Stephen Maynard is charged by indictment with setting four arson-fires in the Lassen  
19 National Forest and the Shasta-Trinity National Forest in violation of Title 18, United States Code,  
20 Sections 844(f) and 1855. New evidence that was uncovered following his last detention hearing and  
21 not previously filed before with the Court demonstrates even more clearly Maynard is an exceptionally  
22 dangerous person. He sets fires to harm people he has never met, including attempted fires in other  
23 districts. And, chillingly, Maynard attempted to follow a woman and her three children home with a  
24 machete. No combination of release conditions can assure his appearance or the safety of the  
25 community; he must be detained.

26 ///

27 ///

1                   **II.        BACKGROUND**

2                   **A.        Maynard's Arson Offenses**

3                  During July and August of 2021, Maynard traveled across wide swaths of Northern California  
4 setting and attempting to set wildfires. Wherever Maynard went, fires followed. Four of Maynard's  
5 fires are charged in the indictment. Arson-fires are always potentially dangerous, but Maynard's fires  
6 were particularly so. As described in the government's original detention memorandum and attachments  
7 as well as the criminal complaint, Maynard traveled to the evacuation area around the Dixie Fire, an  
8 enormous fire that was being fought by thousands of firefighting personnel. ECF Nos. 1 and 5. Many  
9 of these firefighters and other first responders were inside of what could be compared to a letter "C"  
10 fighting fire that was surrounding the firefighters on three sides. Maynard set three of his fires (two of  
11 which are charged in the indictment) behind the firefighters at the open end of the "C". ECF No. 5-1  
12 (exhibit showing placement of fires behind fire line). If investigators from the U.S. Forest Service had  
13 not been tracking Maynard using multiple technologies and had been waiting nearby in shifts throughout  
14 the day and night, those fires would have grown, potentially cutting off first responders from escape.

15                 Maynard's other fires involved similar close calls. Mountain bikers happened upon one of the  
16 fires while it was still small. They were quick enough and knowledgeable enough to slow it down with  
17 fire breaks until fire personal arrived and put it out. Two other small fires Maynard set in the same  
18 general area on the same day were not able to establish themselves. Another fire was discovered by  
19 chance as a fire engine crew drove along a nearby road at night and saw the fire glowing in the distance.

20                 After his arrest, Maynard threatened to kill a Sheriff's Deputy, kicking his cell door and  
21 screaming, "I'm going to kill you, you fucking pig. I told those fuckers I didn't start any of those fires."

22                   **B.        Newly Recovered Evidence**

23                 After his arrest, U.S. Forest Service agents worked with the Federal Bureau of Investigation to  
24 access and forensically review encrypted and/or locked digital devices seized from Maynard pursuant to  
25 a federal search warrant. The FBI has now been able to access several of his devices. As agents have  
26 learned, Maynard frequently used his devices to film his activities.

27                 1.        Maynard's arson attacks in another district.

28                 In addition to his fires in the EDCA, Maynard had also attempted to set fires on private land in

1 the Northern District of California. On July 18, 2021, just two days before the first fire charged in the  
2 indictment, Maynard set up a video recorder on the dash of his car and filmed portions of a drive he took  
3 in a relatively rural part of the Northern District of California. During the drive Maynard encountered a  
4 locked gate blocking his path across private property. He became upset and made threatening  
5 statements regarding the landowner, including a threat to kill. Maynard then began driving in what he  
6 narrated as an attempt to identify and get closer to the house of the person with the gate. As he drove,  
7 Maynard said things like, “I’ll just burn this to the ground...” and “that’s what you win, you win a  
8 wildfire right in your house...”

9       On the video recordings, after making these threatening statements, Maynard stopped near the  
10 side of the road. The audio then has sounds consistent with Maynard rolling down his window. Then  
11 there is the sound of Maynard trying to strike a match several times before it catches fire. Maynard  
12 continued driving after the match lit, stating “...you want some more [derogatory term]? You want me  
13 to set two fucking fires? I’m going to burn you up. I’m going to burn your shit to the ground.”  
14 Moments later Maynard stopped again in a heavily vegetated area. Once again, the recording captured  
15 the sound of Maynard rolling down his window. And once again, it captured the sound of Maynard  
16 striking a match. After the match caught fire, Maynard drove off stating, among other things, “Damn!  
17 That’s going to burn like a mother fucker! Haha! What’s up now [derogatory term]? I’m getting the  
18 fuck out of here!”

19       Agents were able to locate the area where Maynard attempted to set these fires. It appears that  
20 Maynard’s attempts were unsuccessful, likely due to weather conditions.

21           2.       Maynard terrorizing a family for his own gratification while describing his assault  
22 and threatening to kill.

23       On July 4, 2021, a mother and three young children were at a gas station in a small town in the  
24 Eastern District of California. While filling their truck, the mother became concerned about a man in  
25 the gas station. He was staring in their direction and swinging a machete—a broad, heavy knife that is  
26 often used as a tool or a weapon.<sup>1</sup> Due to her concern and uneasiness about the man with the machete,

27           <sup>1</sup> A witness to Maynard’s earliest charged fires was initially reluctant to speak with law  
28 enforcement. When approached the next day, he apologized stating that he was afraid of Maynard who  
had been staring at him earlier the prior day while holding a large knife.

1 they left the gas station and began driving. The man with the machete followed them. As they made  
2 their way home, he seemed to pursue them, following wherever they went. Scared and concerned that  
3 he was planning to hurt them, the mother turned to avoid leading him home. She called 911, and she  
4 kept driving until she found a police station and pulled into the parking lot. As she pulled into the police  
5 parking lot, the man finally stopped his pursuit.

6 This man was not identified at the time, but we now know Maynard video recorded this pursuit.  
7 We do not have guess at his intentions, Maynard described them out loud as it was happening and  
8 seemed to enjoy the fear he created. He said he was following them home to take down their address  
9 and return later. He whispered a plan to cause fear and pain:

10 Hi kids, I like you. [Slurping noise]. [Slurping noise]. [Slurping noise].  
11 [Slurping noise].

12 ...

13 What's wrong kids, what's wrong, what's wrong little girl, you like people  
14 to know where you live little girl? Maybe you should quit pissing people  
15 off and they won't fucking follow you to your house. Maybe they won't  
16 follow you to their house, maybe. [Low menacing laughter]. You ain't  
17 going, I'm going to write down your address [racially charged derogatory  
18 term] and then I'm gonna come by later. I'm gonna lick your face off,  
19 boy. Where you goin' boy?

20 And, when they turned into the police parking lot, screaming, "I will kill your motherfucking mother  
21 right in front of you bitch. I will kill your whole goddamn family motherfuckers. I will kill every  
22 goddamn person in your family [derogatory term]. I will kill every motherfucker in your family  
23 [derogatory term]." This is not nearly the totality of what Maynard said while pursuing this family, but  
24 it provides a descriptive picture.<sup>2</sup>

### 25 III. PROCEDURAL HISTORY

26 Maynard was arrested on a federal complaint issued on August 8, 2021, that charged one count  
27 of setting timber afire in violation of 18 U.S.C. § 1855. ECF No. 1. On August 11, 2021, Magistrate  
28 Judge Dennis M. Cota ordered Maynard detained as a danger and a flight risk. ECF No. 8. Less than a

26 <sup>2</sup> The recordings in this case have been provided to defense counsel pursuant to a protective  
27 order designed to protect the identities and home addresses of Maynard's planned victims. The  
28 government will provide a 3 minute 25 second video of this incident, marked as Ex. 1, to the Court.  
Lodging this exhibit may be delayed until the date of the hearing due to issues related to this week's loss  
of power in the federal courthouse.

1 month later, Maynard filed a motion to reopen bail. ECF No. 18. On September 13, 2021, the parties  
2 appeared in front of Magistrate Judge Allison Claire.<sup>3</sup> ECF No. 19. After hearing argument, Judge  
3 Claire ordered the defendant released on an unsecured bond and special conditions. ECF No. 19. Judge  
4 Claire agreed to stay her release order to permit the government to appeal to the District Court. ECF  
5 No. 19. Before the government could file an appeal, Maynard withdrew his motion. ECF Nos. 23-24.

6 On November 18, 2021, the Grand Jury returned an indictment charging Maynard with four  
7 counts of arson to federal property in violation of 18 U.S.C. § 844(f) and one count of setting timber  
8 afire in violation of 18 U.S.C. § 1855. ECF No. 27.

9 On December 13, 2021, Maynard filed the present motion requesting that detention be reopened.  
10 ECF No. 35.

11 **IV. MAYNARD SHOULD BE DETAINED**

12 **A. Standard under the Bail Reform Act**

13 Bail hearings generally proceed by proffer and the rules of evidence do not apply. 18 U.S.C. §  
14 3142(f). The defendant has the right to call witnesses and to cross-examine government witnesses, if the  
15 government elects to call any. 18 U.S.C. § 3142(f).

16 The court must order a defendant detained if the court finds that conditions cannot be imposed  
17 that will assure the defendant's appearance, or the safety of the community or another person. 18 U.S.C.  
18 § 3142(e). The burden with respect to the flight risk prong is preponderance of the evidence. *United*  
19 *States v. Aitken*, 898 F.2d 104, 107 (9th Cir. 1990). With respect to danger, the government bears the  
20 burden by clear and convincing evidence. 18 U.S.C. § 3142(f); *United States v. Motamedi*, 767 F.2d  
21 1403 (9th Cir. 1995).

22 The Bail Reform Act sets out several factors the Court should consider in reaching its decision  
23 regarding detention and release: (1) the nature and circumstances of the offense charged, including  
24 whether it is a crime of violence or drug offense; (2) the weight of the evidence against the defendant;  
25 (3) the history and characteristics of the defendant, including ties to the community, past conduct, and  
26 employment history; and (4) the nature and seriousness of the danger to any person or the community

27  
28 <sup>3</sup> The transcript has been attached to the defendant's motion as Ex. A.

1 that would be posed by the person's release. 18 U.S.C. § 3142(g).

2       **B.     The facts of this case support detention**

3           1.     Nature and Circumstances of the Offense Charged

4           Arson is a dangerous crime, and it is a crime for which it is particularly difficult to fashion  
5 conditions of release. *See, e.g., United States v. Ferranti*, 66 F.3d 540, 544 (reversing district court  
6 release order in arson and witness tampering case and citing cases where elaborate conditions of release  
7 were insufficient); *United States v. Arvanitis*, 667 F.Supp. 593 (N.D. Il. 1987) (detaining several  
8 defendants in an arson and extortion scheme based on the charged offenses). The penalties are serious  
9 and the incentive to flee is high.

10          Maynard has now been charged with four counts of 18 U.S.C. § 844(f). Reflecting the  
11 seriousness of the crime, this statute carries a mandatory minimum sentence of five years and a  
12 maximum of 20 years of imprisonment on each count. This increases the incentive to flee and reflects  
13 the dangerousness of his conduct.

14          The nature and circumstances of Maynard's arson offense also show that he is particularly  
15 dangerous, even among arsonists. Over weeks, Maynard has set a series of fires in the vicinity of the  
16 Lassen National Forest and Shasta Trinity National Forest. *See* Complaint Affidavit of USFS Special  
17 Agent Tyler Bolen ("Complaint Aff. of Bolen"), ECF No. 1. Maynard traveled long distances through  
18 California specifically to this area. Complaint Aff. of Bolen. He entered the evacuation zone and began  
19 setting fires behind the first responders fighting the Dixie fire. In addition to the danger of enlarging the  
20 Dixie fire and threatening more lives and property, this increased the danger to the first responders.

21          Words cannot describe this additional threat to firefighters and other emergency personnel as  
22 effectively as the map attached as Exhibit 1 to the government's initial detention memorandum. ECF  
23 No. 5-1. The map shows the boundaries of the Dixie fire where firefighters were laboring to protect the  
24 public at significant personal risk. The map also shows where Maynard set fires on August 5<sup>th</sup> and 7<sup>th</sup>  
25 behind those fire lines. Maynard's fires were placed in the perfect position to increase the risk of  
26 firefighters being trapped between fires. But for the dedication and efforts of U.S. Forest Service  
27 investigators working around the clock to track Maynard, those fires would not have been discovered in  
28 their infancy. With Maynard's growing fires at their backs, firefighters would have been placed at much

1 greater risk. This factor strongly supports detention.

2           2. Weight of the Evidence

3           The second detention factor also favors detention. As described in the criminal complaint  
4 affidavit, Maynard was traveling alone through the forest in isolated areas. Agents had installed a  
5 tracker on his vehicle. Where Maynard went, fires started. Not just once, but over and over again. In  
6 addition, the government now has recordings of Maynard attempting to set fires in the Northern District  
7 of California. This constitutes other acts evidence pursuant to Federal Rules of Evidence 404(b) and  
8 shows Maynard engaged in an arson spree. As a result, the evidence is strong and Maynard will be  
9 convicted if he chooses to go to trial.

10           3. History and Characteristics of the Defendant/Ties to the Community

11           Maynard's ties to the community are also exceptionally weak. He was living out of his car alone  
12 and traveling across large sections of Northern California. As he traveled, Maynard set fires and  
13 threatened members of the public with whom he had no previous contact.

14           In fact, Maynard appears to hold himself apart from most of humanity with a disproportionate  
15 and misdirected sense of revenge and desire to terrorize. His text messages paint a bleak apocalyptic  
16 picture. In one example, on June 3, 2021, Maynard wrote:

17           I need a car asap or I am going to end the whole world once and for all.  
18           No car and there will be no peace. If there is no car by Friday I will start  
19           some serious trouble for everyone that has stood by and just watch as I  
have died inside over the past few weeks. Anything I do not have a car by  
Friday I will start ending people's fucking worthless lives. I hate this  
world and if I have to go more than one or two days without a car then I  
will end the whole world from the disease of humanity.

21           The tone of this text message is so over the top that it could almost lend itself to being interpreted as a  
22 twisted or sick sense of humor, except that Maynard got a car and went on an arson spree in following  
23 weeks that did threaten people's lives. Throughout his recordings Maynard makes threats to harm  
24 others, often using language directed toward people of a particular racial background and toward people  
25 of a particular religious denomination. Maynard also talks about shooting people and killing them in  
26 various ways.

27           Moreover, even prior to his arson spree and this documented behavior, Maynard had was an  
28 increasingly unstable and threatening presence. Following Maynard's arrest and accompanying national

1 media attention, law enforcement agents were contacted by people in different parts of the country who  
2 had disturbing interactions with Maynard in the past. One described police being called when Maynard  
3 was terminated from a university teaching job in the Eastern half of the United States. Another had  
4 terminated Maynard's coworking-type office space lease in the Pacific Northwest in 2020 after security  
5 footage caught Maynard looking through a window while holding a knife and making threatening  
6 statements about people who passed by outside.<sup>4</sup> Maynard's movements show an increasingly unstable  
7 and dangerous person, someone who derives enjoyment from other people's fear in a way that most  
8 cannot fathom. As his threatening and dangerous behavior has escalated, his community ties have been  
9 increasingly severed while his flight risk and dangerousness has multiplied.

10 Therefore, this factor also heavily favors detention.

11       4.     Nature and Seriousness of the Danger to the Community

12 Finally, Maynard poses a particular danger to the community. He is a serial arsonist, during a  
13 dangerous time for state and the public from wildfires. Four of the last five years have seen major  
14 wildfires in the state. This trend of massive fires is likely to continue. Wildfires can and do kill  
15 Californians and destroy their homes. Entire towns were destroyed this year. In past years, many have  
16 died. Moreover, the way Maynard sets his fires is particularly dangerous to first responders and, as  
17 shown by the recordings of him setting fires, is part of a desire to hurt people. Maynard's desire to hurt  
18 others is not just limited to arson. As demonstrated by his own recordings, Maynard has also plotted to  
19 assault a young girl and threatened to kill her mother in front of her. He is simply a person who cannot  
20 be trusted on supervision.

21 The nature of Maynard's arson-fires and other activities also make him a particularly poor  
22 candidate for pretrial release. U.S. Forest Service Agents had a tracker on Maynard's vehicle and were  
23 waiting in shifts nearby to track Maynard's movements and discover any fires he set. These were  
24 extraordinary and resource intensive precautions that were necessary because of the difficulty of finding  
25 someone in the forest without a tracker and the speed with which a fire can grow.

26

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27       <sup>4</sup> For example, "I'm going to stab you in the throat." And, in another instance, walking back and  
28 forth laughing manically and mumbling to himself. Though in this second example it appears that the  
object he is holding may not be a knife.

To the extent that Maynard argues that a residential facility or ankle monitoring can protect the public, that argument is simply wrong. Maynard's dangerous conduct has been escalating. If Maynard leaves a facility or cuts an ankle monitor, the likelihood that Pretrial Services or a law enforcement agency can recapture him before he harms someone is slight. Maynard, for whatever psychological or personal reason, is bent on harming others. He is itinerant by nature and dangerous. Even with a phone tracker active, it still took agents tremendous efforts searching the forests to locate Maynard and install a vehicle tracker. This time there will not be the benefit of a phone tracker. This time there will not be a vehicle tracker. Massive resources, focus, work, and incredible luck stopped Maynard before he killed or seriously harmed someone. Next time he will be gone, and it is likely he will be found only because of a tragedy caused in lives of members of the community.

11 Through his recordings, his sadistically terrorizing acts, and his fires, Maynard has told us who  
12 he is now and what he intends to do. We should take him at his word. While Maynard appears deeply  
13 disturbed, he poses an additional danger because he is also highly intelligent. He fled when the family  
14 in the truck pulled into the police station, he set fires in ways that were difficult to detect, and he denied  
15 setting fires when caught. He combines a strong and apparently growing desire to harm others with the  
16 intellect to carry out his worst impulses. With no conditions or combination of conditions sufficient to  
17 ensure his appearance or the safety of the community, Maynard must be detained.

## V. CONCLUSION

19 For the foregoing reasons, the government respectfully requests that the defendant be detained as  
20 a flight risk and as a danger to the community.

22 || Dated: December 17, 2021

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